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**NP Lake Mead LLC d/b/a Fiesta Henderson Casino
Hotel and International Union of Operating
Engineers Local 501, AFL-CIO. Case 28-CA-
230458**

June 28, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND KAPLAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on November 5, 2018, by International Union of Operating Engineers, Local 501, AFL-CIO (the Union), the General Counsel issued a complaint and notice of hearing on November 14, 2018, alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's requests to recognize and bargain with it and to furnish relevant information following the Union's certification in Case 28-RC-218426. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On December 10, 2018, the General Counsel filed motions to transfer and continue matter before the Board and for Summary Judgment. On December 14, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the Union filed a Joinder in the Motion for Summary Judgment and Request for Remedies.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish requested information, but contests the validity of the Union's certification on the basis of its contention, raised and rejected in the underlying representation proceeding, that the unit is not appropriate.¹ In addition, the Respondent asserts that it has raised issues of material fact by denying that the requested information is necessary and relevant to the Union's role as bargaining representative.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

For essentially the same reasons as in *NP Sunset LLC d/b/a Sunset Station Hotel Casino*, 367 NLRB No. 62, slip op. at 1-2 (2019), we also find that there are no factual issues warranting a hearing with respect to the Respondent's refusal to furnish the Union with requested information. The complaint alleges, and the Respondent admits, that about May 14, 2018, the Union requested in writing that the Respondent furnish it with the following information:

1. A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period [. . .].²
2. A copy of all current company personnel policies, practices or procedures.
3. A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above.
4. A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship,

¹ The Respondent raises the unit issue in both its denial of complaint par. 5(a) and in its affirmative defenses.

² The Union requested the information in a letter (mis)dated March 14, 2018, which is appended as Exhibit A to the Respondent's response to the General Counsel's motions to transfer and continue matter before the Board and for Summary Judgment. That letter included the words "and Social Security number" at the end of the first numbered information request. Par. 5(f) of the complaint and the motions to transfer and continue matter before the Board and for Summary Judgment, however, deleted the phrase "and Social Security number." The deletions in

both documents were signified by brackets and ellipses. Thus, we construe the General Counsel's summary judgment motion to exclude the Social Security numbers of unit employees. Moreover, even if the General Counsel's motion were interpreted to seek such data, the Board has held that Social Security numbers are not presumptively relevant and that the requesting union must demonstrate their relevance. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996), enf'd. mem. 107 F.3d 923 (D.C. Cir. 1997) (per curiam). There has been no effort to demonstrate relevance here.

training, legal services, child care or any other plans which relate to the employees.

5. Copies of all current job descriptions.

6. Copies of any company wage or salary plans.

7. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year. A copy of all witness statements for any such discipline.

8. A statement and description of all wage and salary plans which are not provided under number 6 above.

The complaint further alleges, and the Respondent admits, that since May 25, 2018, the Respondent has failed and refused to furnish the information requested by the Union.

It is well established that information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request.³ See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2002). Specifically, the information requested by the Union as to unit employees is presumptively relevant for purposes of collective bargaining, and the Respondent has not asserted any basis for rebutting the presumption. See, e.g., *NP Sunset LLC*, supra; *CVS*, 364 NLRB No. 122, slip op. at 1 (2016), enf. d. mem. 709 Fed.Appx. 10 (D.C. Cir. 2017) (per curiam); *Metro Health Foundation*, supra.⁴

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Henderson, Nevada (the Respondent's facility), and has been engaged in operating a hotel casino. During the 12-

month period ending November 5, 2018, the Respondent, in conducting its operations described above, purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Nevada, and derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on May 3, 2018, the Union was certified on May 16, 2018, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:⁵

All full-time and regular part-time slot technicians and utility technicians employed by the Employer at its facility in Henderson, Nevada; excluding all other employees, office and clerical employees, guards, and supervisors as defined by the National Labor Relations Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

At all material times, Valerie Murzl has been an agent of the Respondent within the meaning of Section 2(13) of the Act.⁶

About May 14, 2018, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees, and since about May 25, 2018, the Respondent has

³ Although the complaint does not specifically state that the information request was limited to unit employees, we find, in agreement with the Respondent, that it should be so construed. See, e.g., *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003) (request for "copy of all payroll records" construed as pertaining to unit employees, even though request not described in those specific terms).

⁴ With respect to items 6 and 7 in the Union's request for information, we note that, in its response to the General Counsel's summary judgment motion, the Respondent refers to this information as confidential but provides no explanation or argument in support. It is well settled that the mere assertion of confidentiality does not, by itself, raise a material issue of fact warranting consideration. E.g., *Mission Foods*, 345 NLRB 788, 792 (2005) (summary judgment granted where "[r]espondent . . . only asserted a blanket claim of confidentiality, and [did] not establish[] why particular information would trigger specific confidentiality concerns"); see also *Bud Antle, Inc.*, 359 NLRB 1257, 1265 (2013) (claim of confidentiality rejected when no evidence offered in support), reaffirmed and incorporated by reference 361 NLRB 873 (2014). Further, with respect to the Union's request in item 7 for copies of witness statements in

disciplinary matters, the Respondent does not contend there is a confidentiality interest weighing against disclosure of any specific statements or, indeed, raise any particularized defense, including that the applicable standard should be changed. See *NP Sunset LLC*, supra, slip op. at 2 fn. 5; see also *Piedmont Gardens*, 362 NLRB 1135 (2015) (overruling *Anheuser-Busch, Inc.*, 237 NLRB 982 (1978) (holding that witness statements must be furnished on request unless employer establishes legitimate and substantial confidentiality interest that outweighs the union's need for the statements), aff'd. on other grounds 858 F.3d 612 (D.C. Cir. 2017)). Chairman Ring and Member Kaplan apply *Piedmont Gardens* here as extant precedent absent any request to reconsider it.

⁵ The Respondent subsequently filed a request for review on May 25, 2018. The Board denied the request for review in Case 28-RC-218426 by unpublished order dated July 25, 2018.

⁶ Although the Respondent denies the complaint allegation that Valerie Murzl has held the position of corporate vice president of human resources and is a supervisor within the meaning of Sec. 2(11) of the Act, it admits that Murzl is an agent within the meaning of Sec. 2(13) of the Act.

failed and refused to recognize and bargain with the Union.

Also about May 14, 2018, the Union requested that the Respondent furnish it with the information described above, and since about May 25, 2018, the Respondent has failed and refused to furnish the requested information. The requested information for the unit employees is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

We find that these failures and refusals constitute an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since May 25, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and by failing and refusing since May 25, 2018, to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Respondent's unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to cease and desist from such conduct. In addition, we shall order the Respondent to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information it requested on May 14, 2018, with the exception of employee Social Security numbers.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord: *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

The Union requests additional enhanced remedies. Contrary to the Union's assertion, there has been no

showing that the Board's traditional remedies are insufficient to redress the violations found. Accordingly, we deny the Union's request for additional remedies. *NP Sunset LLC*, 367 NLRB No. 62, slip op. at 3.

We also reject the Union's request for a broad order requiring the Respondent to cease and desist from violating the Act "in any other manner" and "to bargain with every union where the Board issues a certification." *Id.*, citing *Hickmott Foods*, 242 NLRB 1357, 1357 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, NP Lake Mead LLC d/b/a Fiesta Henderson Casino Hotel, Henderson, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the International Union of Operating Engineers, Local 501, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time slot technicians and utility technicians employed by the Employer at its facility in Henderson, Nevada; excluding all other employees, office and clerical employees, guards, and supervisors as defined by the National Labor Relations Act.

(b) Furnish to the Union in a timely manner the information requested by the Union on about May 14, 2018, with the exception of employee Social Security numbers.

(c) Within 14 days after service by the Region, post at its Henderson, Nevada facility copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 25, 2018.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 28, 2019

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Union of Operating Engineers, Local 501, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement:

All full-time and regular part-time slot technicians and utility technicians employed by the employer at its facility in Henderson, Nevada; excluding all other employees, office and clerical employees, guards, and supervisors as defined by the National Labor Relations Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union on May 14, 2018, with the exception of employee Social Security numbers.

NP LAKE MEAD LLC D/B/A FIESTA HENDERSON
CASINO HOTEL

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-230458> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

